

**COCLJ AUTOMATION ADVISORY COMMITTEE  
MEETING – MARCH 12, 2010  
HELENA, MONTANA**

**MEMBERS PRESENT:**

Karen Nelson, Supreme Court Administrator's Office  
Chairperson Judge Larry Carver, Judith Basin Justice of the Peace  
Judge Johnny Seiffert, Carbon Co. Justice of the Peace  
Claudia Anderson, IT Trainer  
Thelma Keys-Nicol, Kalispell Municipal Court  
Jennifer Boschee, President of MJC&MCCA  
Sharon Skaggs, Yellowstone County Justice Court  
Judge Gregory P. Mohr, Justice of the Peace/City Judge

**MEMBERS PRESENT BY PHONE CONFERENCE:**

Barbara Pepos, Richland Co. Justice Court/City Court

**MEMBERS NOT PRESENT:**

Sheri Bishop, excused due to illness  
Judge David Ortley

Meeting was called to Order by Chair Judge Larry Carver at 9:00 AM

**APPROVAL OF JANUARY 14<sup>TH</sup>, 2010 MINUTES:**

An error on Page 3, 1<sup>st</sup> Paragraph should be corrected to read: "the court may **reduce** all or part of the amount due in costs or modify the method of payment". Judge Carver noted that on Page 8 of the minutes, paragraph 3 should state, "where a court does not want to receive their citations electronically. "The **City of Choteau** currently does not use their Full Court. The Judge in **Teton County** is a very good and knowledgeable judge, but he may never be willing to use the Full Court Program." Judge Mohr made a motion the minutes be approved as corrected, seconded by Judge Seiffert, and motion was passed by the full committee.

**PUBLIC COMMENT**

No one appeared to make public comment at this time.

**CHAIR JUDGE CARVER UPDATE:**

There has not been a state IT meeting. Judge Carver explained that he answers many questions from the courts; however, he does not make decisions that need to be made by the committee. Judge Carver advised that Karen Nelson is excellent in her job, noting the Supreme Court made a decision that the Court Administrator's office in conjunction with the Automation Committee decides IT matters.

**KAREN NELSON – UPDATE:**

Karen discussed at the last meeting the DUI report that she had put together. Now her office has been contacted by DUI task forces from various counties regarding a study

they are putting together, under the coordination of a private office in Bozeman. This is an in-depth study of DUIs from beginning to end. David Madison, coordinator, advised Karen that they are working with the local officials in 19 counties. Sharon Skaggs was contacted and was able to put together data on DUIs from January forward; however, they also wanted information on 45 codes. Unfortunately, that report is not working, so Sharon did contact the Court Administrator's office for help and JSI is working on it. Sharon said her court, along with Laurel and Billings Municipal courts were all contacted for the information.

Karen Nelson explained that the Bond Book Meeting has been rescheduled to March 19<sup>th</sup>, partially due to Lisa's medical absence. Judge Carver explained how big the Bond Book project is, since it is the statute table for Full Court. They are currently looking at all the statutes and there was a disagreement between Mr. Noose and a recent District Court decision. The disagreement came out of the Columbus area and involved basic rule violations, as well as speeding in reduced speed zones. Although, Judge Carver did not have the decision in front of him, that particular County must follow the decision of the District Court. The Commission did not agree with the decision and the rest of the courts will handle those violations as they always have, even though, Greg Noose wanted the entire State to change. Therefore, Judge Carver advised Greg Noose that by statute the Court Administrator's office, in conjunction with the automation committee would resolve these issues.

Judge Carver is hopeful that the Bond Book will be finished at the Friday, March 19<sup>th</sup> meeting and ready for distribution at the Spring School for Judges, which is the week of April 26<sup>th</sup>. Further, he explained some of the new problems, such as all the elements under theft – fraud, extortion, domesticated hoofed animal, etc. There will be many subcategories under theft and it will be important to pick the right one. Judge Carver advised that the Clerk of District Court's Association and the County Attorney's Association are adamant that this change be made. It will be important that the courts pick the proper charge. Judge Seiffert believed that some of the officers won't even get the charge correct. Due to this, all the charges must be looked at and changed to include all the elements.

Judge Carver believed they will distribute the bond book on a CD and allow each court to print it out as they wish. This is a budget issue as well. By having the bond book in an electronic format, it would be easier to change. Judge Seiffert said his court may make some changes in the bond amounts and then have it printed up for all the officers.

Karen Nelson stated that the next update is the Highway Patrol citation import project, which Sharon is currently involved in. Sharon advised that the project is going very well considering her court is a test site. Marty has worked very well with the Yellowstone County Justice Court in resolving any problems they had. Sharon said they did have some felony charges come through and some Officers did take bond on some of the electronically remitted citations. Her court did not want bond collected by the officer, as it oftentimes doesn't get turned in quickly. Sharon said there were issues with statutes, such as not being able to determine if it was 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> offense and some of the statutes

had “brackets” in them from the Highway Patrol and the courts use “parenthesis”, which causes matching problems. Sharon said in that case they print out the citation and then enter it manually into Full Court.

Sharon advised in her Court the felony citations are reviewed at the County Attorney’s office, where a formal complaint is then filed in District Court. Judge Carver wanted to know how this works when the Highway Patrol issues a charging document on their end, with a ticket # and an appearance date, and they just give that ticket to the County Attorney. Judge Seiffert said that citation has not been filed at that point. Judge Seiffert asked what happens to the citations once the formal Information is filed in District Court. Sharon answered those citations stay in the county attorney’s file and the Officers would check there if they wanted to know the status.

Sharon explained procedure in her county further by stating that if the county attorney’s office decides not to charge the individual and they have been arrested, then the county attorney’s office makes the arrangements to release the Defendant. Her court does not get involved in that process. Her Judges do not do probable cause hearings on the weekends, but see the defendants incarcerated on Monday mornings.

Karen Nelson said an issue they have is regarding the PDF file that comes from the officers is a little bit different than what the officer has. There are 2 differences; the court’s copy does not show the BAC, or the race field. Also, after receiving some paper citations from Judge Carver’s office, the disposition states the Defendant has posted bond and is forfeiting, when the defendant has not posted bond. She stated the program apparently pre-fills this in. Also, on the paper copy there is a field titled “companion” and Karen does not know what this refers to. Judge Carver has asked a couple different people this question and got different answers. It does not necessarily mean there is a companion citation. Karen said these issues are not huge, but a couple of meetings ago it was decided that BAC and race would be on the electronic copies, therefore, these items should be on the paper copies filed in the Courts as well. Karen said she would contact the Highway Patrol and get these problems resolved, if everyone agreed.

Judge Mohr made a motion that any copy, whether electronically filed or paper filed must be a true and correct copy of the original citation issued. All copies of the citations must be exactly the same. Judge Seiffert seconded this Motion. The committee approved this Motion.

A discussion regarding how the copies were marked, in which Karen said they were: Agency, Court, Court Disposition and Defendant copies. Sharon said the program does not allow the import of a citation more than once. Judge Carver suggested Karen also ask the Highway Patrol what their definition is of “companion” when marked on their citations. Judge Seiffert asked what is read from the bar code on the citations. Karen believed that everything on the face of that citation can be read from the bar code. Karen would also ask the Montana Highway Patrol about this. Sharon said an anomaly recently occurred in their Court where a lady came in with a citation, however, everything on the

citation was not from this lady's DL and they wanted her to have her DL checked, to make sure the bar code was indeed the same as her DL information.

Karen Nelson said that Flathead County is checking into an interface with New World. Right now, Sharon must import her Sheriff's Office tickets in a different program than the ones that are imported from the Highway Patrol. Judge Carver asked if the committee needed to develop an information exchange policy for the courts to follow. Karen said that once the test site is complete and they are ready to move ahead, they would need to adopt some rules as to the standard for exchanging information.

**STATE IT VACANCY SAVINGS IMPACT:**

Judge Carver said that what this means is a 5% vacancy savings, therefore, if someone leaves their position it cannot be filled until they have met the 5% savings. Also, the Governor has asked for a 5% budget decrease in spending. Currently, Greg Noose is down 7 people in his IT Department, and the ID Bureau is down 8 people. Karen said they are down 2 people and these positions were a courtroom technology person and one business analyst. Judge Carver said these departments are having a hard time in making changes to their technology right now. Karen Nelson said the projection for the next several years is that the State may be \$300 Million in the red. Judge Seiffert wondered how it went from \$500 Million in the bank to \$300 Million in the red. Karen Nelson believes that every revenue source has been underperforming. The Governor is trying to avert a Special Session of the Legislature.

The Judicial Branch is approximately 1% of the overall budget. The big items are Corrections and Health and Human services. Karen said one thing they have been doing since 2006 is a 4 year replacement of equipment, but probably need to go to a 5 year schedule. Because the Enterprise Program is web-based, this will cut down on some of their equipment needs. Systems will be set up on a district basis rather than on a court basis. Because IT is the biggest part of the Judicial Branch budget, they are looking at every possible option to cut costs.

**CITE PAY:**

Judge Carver received a phone call from Ernie with JSI and learned that Cite Pay is still being worked on and one problem is that they have to fix the over the counter machine. He said they are working on getting the on-line payments ready as soon as they receive a contract. Karen discussed the contract issues. Ernie normally works directly with courts, but this time the contract is with the Court Administrator's office. Mike Manion, the attorney with the DOJ, looked at the contract for the Court Administrator's Office. Right now, the Transaction fee is listed at 5.95% of the fine, fee, or bond. Karen broke out the contract to maintaining the system as well as making this a companion contract with JSI. Karen wanted the committee to agree to the Memorandum of Understanding with CitePay. This is a request made by the court to the Court Administrator's Office. Karen wanted to know if the committee agreed that they need a contract with the Court Administrator's Office and a Memorandum of Understanding with the courts that want to participate in CitePay. The committee members agreed this was important. Judge Carver said that this Memorandum of Understanding was discussed earlier, following the issue

in the Dillon City Court, where the computers were in an area accessed by the public and not locked up.

Jennifer Boschee advised in the Minutes of October 23<sup>rd</sup>, 2009, the minutes reflected the following: Ernie would like to get 5% for their effort in programming and setup, however, he believes he could make a business model with 4 ½ %. Karen would send a copy of that section to Ernie as well.

Karen said an issue came up in the Billings area where a defendant made their payment at night, however, was arrested later on, as the program had not been updated to take the Warrant out. Sharon said that in her court they have received phone calls from the Officers asking if the money had been received and after checking, they would find the payment had been received and the warrant would be quashed. Sharon said her court works the on-line payments every day to prevent this. Judge Seiffert noted that part of their agreement with CitePay was if a Warrant had been issued, the defendant would not be allowed to make a payment, but must contact the court.

The committee discussed the “chargeback fees”, in a case where someone cancelled the transaction with their credit card provider. Judge Seiffert said this fee could not come out of the court’s fines, bonds or restitution accounts. This money would have to come out of the court’s budget, the same as if the court ordered new checks and submitted a claim.

Judge Carver read further under “F”, (Provider may charge the Customer Court and Customer Court shall pay to the provider the full amount of the credit card and debit card transaction, with the exception of any Provider fee). What is the Provider fee? Is the Provider fee the same as the Transaction fee? The paragraph states that the court has gotten their money and that money must go back to CitePay, if the transaction is cancelled. The committee wants the definition of “Provider Fee”. Karen reiterated the committee’s comments that the courts cannot give back to CitePay more than they received in their trust account.

Judge Seiffert said perhaps CitePay would need to send a bill every month to the court, listing the chargeback’s for the month and the costs associated with them. Then the court would fill out a claim and get it paid out of their budget. Judge Mohr said the courts need to make sure that the “provider fees” won’t automatically be deducted from the next CitePay transaction. Judge Carver said we need to know how CitePay expects to receive their “provider fee”. Karen noted that on the back, the courts are authorizing CitePay to make both credit and debit transactions. The committee noted that CitePay could only be allowed to deposit into the trust accounts, not take money back out of the trust accounts.

Judge Mohr also wanted a change to the statement, “under authorization, full force and effect until the Provider has received written notification from the customer in such time and in such manner”. This is a problem in that the courts must reconcile their books every 30 days, not a date out in the future, so this needs to be clarified as a date certain. Jennifer stated that in the agreement, the court’s account must be referred to as a “trust account”.

Sharon inquired why JSI has not contacted their court to reconcile the 2 accounts that they keep. This was something brought up by Ernie in the earlier discussions with him. Karen would make note of this issue as well. Karen would make the modifications to the Memorandum of Understanding and get back to Ernie with them. Karen believes they will be able to negotiate with Ernie. As an example, the fines coming from the Justice Courts, which is the 50/50 split, is near \$4 Million. This means there is a total of \$8 Million collected, but the county governments keep their half. Judge Seiffert said his court alone collects over \$350,000.00 and at least 10% of those payments come through credit cards. Karen said the next move is to redo the contract and get it approved by her superior, Lois Menzies.

#### **REPORTING OF CRIMINAL DISPOSITIONS (MANS):**

Karen Nelson reported that since October 2007, she has touched on the Enterprise exchanges that she has been working on with the Department of Justice. The projects involved in the electronic exchange program include the Highway Patrol, the Department of Motor Vehicles and the ID Bureau. Unfortunately, the IT support through the DOJ has been hit hard with vacancies and turnovers. However, the Department of Justice has been working for many years on integrated justice projects. In 2006, their department received a Crime Victim grant to work on a notification program. Most of the defendants involved here are either in the courts or the corrections system. Statutorily, crime victims can receive notification about their offenders. Courts can now communicate their court dates to the County Attorneys or Public Defenders; therefore, it makes sense that crime victims should have access to this information.

Since January 2010 they have been piloting with the District Courts in Lewis & Clark County and Missoula County. In just one day 176 entries were generated from those two courts. This procedure applies to any court that is using Full Court; therefore, it applies to the Ltd. Jurisdiction Courts. What the program does is show the Notice of Charges, which would have the MANS # on it. There is also a Notice of Hearing and Results program. Another program group includes the disposition part of the case. The disposition program is keyed on the MANS # and a disposition on the charge or charges. Karen further stated that they report any disposition on any type of criminal charge filed. The Department of Justice has this report on their Web site. The format is XML which follows the national exchange model. The batch notices are obtained through the Central Repository. The committee was then given a demonstration of what Karen was describing.

Once Full Court has a MANS # entered, it would be possible in the future to have the disposition automatically sent to the ID Bureau. Currently, however, the MANS form must be filled out by hand and mailed to the ID Bureau. Judge Carver said the problem he has seen in his jurisdiction is Law Enforcement generates a MANS form on every charge, even a seat belt charge. DUI arrests are not reported to the ID Bureau, therefore, they do not need a MANS form, unless they are felony. Karen also said that the ID Bureau cannot maintain criminal records without the fingerprinting. Karen advised that currently about 75% of the fingerprints taken in the State of Montana are now done

electronically. Jennifer Boschee gave an example where a defendant asked for his fingerprints back, as the statute stated could be done when someone was found not guilty or the case was dismissed, however, the ID Bureau sent a note with the fingerprints, advising that they were scanned in their system. Therefore, it is believed that the fingerprints are never truly removed from the system.

Judge Carver brought up the issue of where someone on a Misd. Drug Charge comes into court and was not arrested on the charge. Because the defendant was never arrested and there is no MANS #, the court has no way of reporting that disposition. Therefore, the court must look at the violation as 1<sup>st</sup> offense, as there is no record of any previous offenses. Statute discussed is shown as follows:

## Montana Code Annotated 2009

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**44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

- (a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;
- (b) the department of corrections; and
- (c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1) (a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

- (a) the charge is the commission of a felony;
- (b) the identification of an accused is in issue; or
- (c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

(6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive

from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) If an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, photographs and fingerprints taken must be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

- (a) upon order of the court that had jurisdiction; or
- (b) upon the request of the individual.

**History:** En. Sec. 6, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 804, L. 1991; amd. Sec. 197, Ch. 546, L. 1995; amd. Sec. 1, Ch. 141, L. 2007.

*Provided by Montana Legislative Services*

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Thelma inquired how to handle a situation of getting the record expunged from the ID Bureau, as in the case of DUI Court ordering the expungement of a record. Judge Carver explained that in the case of a deferred, the Supreme Court ruled that the record information stays as criminal justice information only. Judge Mohr said in the case of a DUI which has gone through DUI Court, these three can be ordered: Expungement, Dismissal, Deferred. Judge Mohr further explained that he cannot defer the imposition of a DUI in his court, but if the defendant goes through DUI Court, he can dismiss the charge, defer the charge, or order the expungement of the record. Judge Mohr stated that the Supreme Court has ruled that expungement means the complete destruction of the record.

Thelma asked in Full Court how they continue to collect the money due, once the record has been expunged. Judge Mohr believes the DUI and Drug Courts are still too new to know how to make everything work. It would work best if all the terms of the sentence are met (such as payment of fines) before the Order to expunge is completed. Kalispell Municipal Court is the only court in the state of Montana that is expunging the record, even though, the legislature allows expungement.

Karen Nelson said that Full Court does have the expungement feature. Claudia believes that the program deletes all the Party Information when a record is expunged and enters Expunge where the name would appear. Judge Carver would like a **demonstration of this process in Full Court during the next meeting**. Thelma said currently the case they are collecting money on is sealed, so it is not available to the public. Judge Seiffert believes that the court cannot collect money once a case is expunged. The same thing would happen if someone has a deferred and that deferred is then dismissed. There is no basis to collect a fine on a dismissed case. Judge Mohr said once the anti-masking statute went into effect, it is specific as to how to handle a deferred. The committee discussed deferred prosecution agreements, which are different in that the charge is dismissed right away, but the window is left open to prosecute the case based on the conditions of the agreement. Right now, the records from the two District Courts are available through the

IJIS Broker to the criminal history at the ID Bureau and to a limited number of prosecutors who have access. The ID Bureau is only interested in the fine and time information from a sentence, however, all the sentencing information is available to them. Judge Carver volunteered to be part of the MANS committee with the ID Bureau.

#### **GENERAL DISCUSSION ITEMS:**

Thelma inquired about the Driver's License suspension change that she had requested, where it would be easier to identify the case where the DL suspension had taken place. Comments from the committee were that the change will be on the Enterprise program. Judge Carver inquired about the status of Enterprise. JSI advised Claudia that they are testing Enterprise in a court in Illinois which is reported to have 1,000 users. Karen wants to see how the test site turns out before the State of Montana gets on board. She stated that they had a series of meetings with JSI in November and December and they need to produce a conversion program for the data from Full Court to Enterprise. Karen said they also have to discuss the architecture with them. Thelma wondered how going to Enterprise from New World would work. Karen said the import processes would be standardized from Full Court to Enterprise.

#### **CHANGE REQUEST - BILLINGS MUNICIPAL – CIVIL INFRACTIONS:**

Judge Knisely submitted a change request to the Full Court program, due to their change in the Billings City Code which took effect March 1<sup>st</sup>, 2010 making some of their infractions have civil penalties. She requested that a new case type be MI and other changes that are necessary to accommodate the new ordinance in Billings. This has not been dealt with before in the State of Montana. Billings will continue to have their traffic infractions and criminal cases. The Court Administrator's office needs to make changes to the tables and processes.

Case Type: Case types are based on how they are filed in the court; TK, CR and civil cases. Karen Nelson said that a separate case type, such as MI, would make it easier for statistical purposes. The MI would stand for "municipal infractions". Judge Mohr said that when the Officer writes the citation, he is the witness. Therefore, contested infractions would have to be scheduled when the Officer could come in. These are civil issues with no jail time. The uncontested civil infractions would be "admit" or "deny". If the defendant admits to it, he is advised of the fine, which is due in 30 days. If the defendant does not show up, then the issue would be a default. If a civil infraction is contested by someone who wants an attorney, Judge Mohr went on to state that the City must have an attorney as well.

Claudia said the City won't be taking bonds; it will be a payment towards penalties and costs. Also, the officers will write these civil infractions on different tickets, as soon as they can get some printed. Judge Mohr also mentioned that if the defendant comes in to pay it, then he must pay the "answer fee", under the civil procedure. Judge said if you do not appear, but just pay it you do not need to pay the "answer fee". The disposition on these cases would be a default. Karen said that a sub-type under TK may not work for the "import module". Karen is proposing the new Case Type of MI, a new degree which would be called "municipal infraction". There would be new fee type and new overdue

processing rules. Karen suggested adding a prefix, such as “BMI-61-10-101 to the statute code on the infractions which are reportable to the DMV. In the plea table they already have “admit” or “deny”. On the findings, they want to add: proven, not proven and default judgment.

Judge Mohr said there are only 2 surcharges which apply to civil cases. He said this is a cross-bred of the small claims, municipal and civil procedures. Judge Mohr believes they have to pay the \$10.00 filing fee. If the defendant does show up, he must pay the \$10.00 “answer fee”. This would take care of the MLEA surcharge and the Court Technology surcharge and a \$10.00 surcharge for the City. The question arose regarding the statutory surcharge 46-18-236(6)(a) MCA which applies to the state equivalent offenses designated as municipal infractions in the ordinance. Judge Mohr said that statute applies under the DUI and Per Se, reckless-attempting to elude plus any criminal. Under the civil infractions, that statute does not apply. Judge Mohr advised in their fee schedule, it starts at \$110, which includes the \$10.00 city surcharge. There are no points for the DMV to report, however, there is money which will still go to the State.

Karen said the statute they looked at was 7-1-4150, in paragraph B:

**7-1-4150. Municipal infractions -- civil offense.** (1) A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed \$500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3) (a) A municipality may by ordinance provide that a criminal offense under state law that is punishable only by a fine is a municipal infraction.

(b) Statutory surcharges must be imposed, as provided in [3-1-317\(1\)\(a\)](#), [3-1-318\(1\)](#), and [46-18-236\(6\)\(a\)](#), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.

(6)(a) City or Town Attorney. Judge Mohr believes that they are civil infractions, which do not apply as criminal offenses under state law. This surcharge is \$15.00.

#### PROPOSED CHANGES:

**Case Type:** Sharon made a motion that the new case type would be **MI**. Seconded by Thelma Keys-Nicol. **This would designate a municipal infraction. Motion passed by the committee.**

**Fee Type:** The committee needs to decide if 3-1-317 MCA and 3-1-318 MCA apply, as well as 46-18-236(6)(a) MCA. Judge Mohr said this is a small claims procedure. He also believes that 80% of the cases will be a simple pass through. Karen said first, municipal infractions that are not state offenses will use a fee code of MILCOST. The municipal infractions that are state offenses but designated as municipal infractions will use a fee code of MISCOST. Karen wants the committee to agree to the surcharges and the MILCOST AND MISCOST.

Judge Mohr made a motion that the following surcharges and fees apply: \$10.00 city surcharge, the \$10.00 State Technology fee, the \$10.00 MLEA fee and the \$15.00 surcharge under 46-18-236(6)(a) MCA. Jennifer seconded the motion. Sharon wanted to note that the minimum penalty is \$100.00, which Judge Carver added could be raised since it was a minimum. Claudia said the total surcharges would be \$45.00. This would apply only to MISCOST. The committee voted to pass the motion.

**Degree:** A new degree of MI for municipal infraction would be added to the degree (severity) table. The standard table degree now is Misd. or Felony. It was agreed that the staff could develop their own degree table value.

**Overdue Processing:** Judge Mohr said they discussed that the initial appearance is 14 days after the citation is written by the officer. If the defendant denies the infraction, it must be heard not less than 10 nor more than 40 days out. Also, if the defendant denies and has an attorney, the time limit is the same, but the City must have their attorney present as well. An Officer must be able to attend those hearings.

Judge Carver reiterated the 14 days from the issuance of a ticket to appearance. On the 15<sup>th</sup> day, if the defendant has never appeared the case will go to default judgment. Then a Notice of Pay will go out giving defendants 30 days. If they pay, they will not have to pay the \$10.00 contract fee. If they don't pay it, then they must appear by the 30<sup>th</sup> day and sign an agreement to pay within 3 months. If no money, then goes to collections.

Claudia suggested on the 15<sup>th</sup> day, default judgment is issued and the notice to pay within 30 days goes out. 30 days after that if not paid, it will go to Collections. This procedure does not allow for DL suspensions or warrants.

Judge Carver said it may be a good idea to keep all overdue processing the same and give the 3 day grace period before the finding of default and the Failure to Pay warning letter. Sharon and Judge Mohr noted, however, that the time frame on this procedure is 40 days, the same as Small Claims. Judge Mohr described this new procedure in the Billings Municipal Court as a cross-bred Hybrid, with a specified period of time, which is much shorter than the normal 6 month period. Judge Mohr said you must have the hearing not less than 10 days, nor more than 40 days after the Officer has written the complaint or citation. The Notice could include the fact that the time frame is set, whether the person uses the mail or appears in person.

#### **FAILURE TO APPEAR**

Judge Seiffert made a motion that 1 day after the appearance date, overdue sets the finding to Default, creates a notice and default judgment on the defendant. Then adds the outstanding judgment to the collections report. Judge Mohr made a second to that Motion. This will be Rule 7. Motion was passed by the committee.

**Statute Table:** The major revision being proposed in order to identify the 61 code violations which are reportable to the DMV is to add a BMI prefix to these. Because they

are now classified as municipal infractions, they will require a different processing type. Claudia said they want to differentiate between the state codes which will now become their municipal infractions.

Judge Mohr made a motion to use the BMI prefix to define the difference between a municipal infraction and a state statute. Jennifer seconded. Motion was passed.

**Plea:** There are no changes, as the ordinance provides for a plea of admit or deny on the municipal infraction.

**Finding:** Proven or Not Proven will have to be added, as they are in the municipal code. Judge Mohr made a motion that they be added to the finding table, second by Jennifer. Motion passed.

Karen said they will set the reporting of convictions to the DMV 15 days after the finding. This would be the same method that is used now. Judge Mohr said the time to appeal on municipal infractions is 10 days. Judge Seiffert did not believe they can use the word conviction when reporting to the DMV. In addition he inquired about the enhancement factor, when the defendant on a municipal infraction did not have his rights read to him as normally occurs on a traffic violation.

Karen said Judge Knisely would provide the Court Administrator's office with a penalty schedule for the municipal infractions. Once approved, they will notify the DMV of the new findings and statute codes. It was noted that parking infractions in Billings would be \$100.00, but Judge Mohr felt Billings may end up reviewing that. The Billings Municipal court will also handle contested parking infractions. Karen wondered if any other jurisdictions in the state were handling parking infractions in this manner.

#### **OVERDUE PROCESSING RULES:**

Karen wanted to discuss Senate Bill 281 which eliminated the language requiring the fine to be \$100.00 or more. It became statute 61-5-214(1)(a). Judge Carver noted that in Rule 5, Optional Rule 5A, Rule 6 and Optional Rule 6A, the (If original fine amount is greater than \$100.00) must be stricken.

Rule #1 and Rule #3 refer to all violations of Failure to Appear, No appearance required, no bond posted and Appearance required. Statute 61-5-214(1)(a) MCA limits the DL suspensions to Misd. now charged under 45 or title 61, chapters 3-10. She felt these rules are too broad. Judge Carver said the legislature made it very clear that Fish, Wildlife & Parks does not apply. Karen suggested under Rule 1 and rule 3 to make the changes per 61-5-214(1)(a) and because of HB 222, on Optional rule 3(a) drop Fish, Wildlife & Parks and that would be the default. Karen suggested a set of Overdue Processing Rules specific to Fish, Wildlife & Parks. You can't suspend a DL, but you can send a notice to suspend privileges for failure to appear. So in other words, a Bench Warrant can be generated and notice to suspend privileges with the dept. of Fish, Wildlife & Parks. Karen said then you would have a set of standard rules specific to Title 45 and Title 61

for Failure to Appear and there would be Failure to appear on violations other than Fish, Wildlife & Parks, such as criminal and local ordinances.

Judge Carver said in regard to Failure to Comply under title 46 that still applies to Fish Wildlife & Parks. Judge Mohr suggested on the Failure to Appear the only language that needed to be there was under Step 1, the caveat that failure to appear on that date will be cause for the issuance of a Warrant for your Arrest. And Karen added that if it is Fish, Wildlife & Parks it would be a notice of suspension of privileges.

Karen said all the Overdue processing Rules would need to be redone for the courts that are grandfathered in. She said they would want to maintain the current type designations on the overdue processing which they run now. Karen said the \$100 restriction is not correct and that needs to be fixed.

**Rule #1:** Add the language of 61-5-214(1)(a). Judge Mohr made a motion to this change. Misd. violations under 45 and 61, chapters 3-10. The committee seconded. Motion passed.

**Rule #2:** No change.

**Rule #3:** Judge Seiffert made a motion to add the language under 61-5-214(1)(a). Judge Mohr seconded the motion. Committee passed.

**Rule #3(A):** Remove Fish, Wildlife & Parks from this rule. Judge Mohr made a motion that Fish, Wildlife & Parks be removed from the Optional Rule 3(A). He also made a motion to make a Rule 3(B), which dealt specifically with Fish, Wildlife & Parks. He also wanted to add the language under 61-5-214(1)(a) to Rule 3(A). Under Rule 3(B) have the statutory language that was there, other than that failing to appear or post bond, add the caveat that a Warrant will be issued and your hunting, fishing and trapping privileges will be suspended. Sharon seconded. Committee approved this motion.

**Optional Rule 4:** Judge Mohr made a motion that it be accepted as written, seconded by Sharon. Committee approved this motion.

**Rule #5:** Remove the \$100.00 requirement on all rules, as this is a matter of law. The difference between Rule 5 and Optional Rule 5A is the Optional Rule 5A sends a warning letter and Rule 5 does not send a warning letter. Judge Carver asked if the overdue processing rules needed to make a designation that if fishing, hunting and trapping licenses were suspended and afterwards all requirements of the sentence were completed, a reinstatement of the fishing, hunting or trapping licenses. There is a requirement that the courts notify the Dept. of Fish, Wildlife & Parks once all requirements of the court sentence have been completed. Sharon said there is a separate overdue processing for Fish, Wildlife & Parks in Rule 3(B). Judge Mohr said unlike a DL, once your fishing, hunting and trapping licenses are suspended, they are not automatically given back to the defendant. Judge Carver said the statute says that once the defendant has complied with the court sentence, the court shall notify the Department,

so the defendant's privilege can be reinstated. Judge Mohr said once a defendant has lost his/her privileges, they have 10 days to turn in every license that they have and they do not get them back. Judge Carver said that the statute says: privileges to apply.

**Rule #6:** Just make it statutorily correct.

**Optional Rule 6A:** Make it statutorily correct.

Judge Carver requested each committee member get a copy of the new Rules, once Karen and her staff have had a chance to type them up.

#### **DL SUSPENSION FORM:**

Karen said the only other item was SB 281 which allowed for the court to determine if the defendant is indigent and therefore, is not required to pay the DMV to have his DL reinstated. The DL suspension form does not have a box for this. Judge Carver advised that he has not been in touch with Greg Noose regarding the new DL suspension form and in fact Greg is unavailable until March 22<sup>nd</sup>.

## **Montana Code Annotated 2009**

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### **61-5-218. License reinstatement fee following license suspension or revocation. (1)**

Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under [61-5-205](#) or [61-8-402](#) shall pay a reinstatement fee as required by [61-2-107](#).

(b) A driver's license or driving privilege that was suspended or revoked under [61-5-207](#) must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a **court notifies the department** that the person has satisfied the requirements of [61-5-214](#)(2) and the court has determined that the person is indigent under the standards set forth in [47-1-111](#).

(3) The department shall deposit the fees collected under subsection (1) in the general fund.

**History:** En. Sec. 1, Ch. 133, L. 2003; amd. Sec. 4, Ch. 360, L. 2009.

Judge Seiffert believes that if the court is going to make a finding of indigence, that form needs to be in the file. Going back to the Municipal Infractions, Judge Seiffert asked if Greg Noose agreed to the points against a defendant's record. Judge Knisely talked to

Greg Noose and if the offense is reportable to the DMV, it will be that department's call whether the points are added. Judge Seiffert said his problem with that is that the points on a defendant's record right now are there because the defendant has gone through all their processes and rights mandated by statute. Under the Municipal Infraction those rights are not available.

Judge Mohr said Billings has created their own ordinances, by amending the Billings City Code by adding the section regarding municipal infractions. Some of this may change if challenged and brought to the Supreme Court.

At the last meeting, recommended changes to the DL form were: eliminate the bottom, white, yellow and pink copies, use Case # and not Court Case/Docket Number, and not suspend at the charge, but on the case. Karen said that all of her discussions with the DMV regarding suspensions and reinstatements were all at the charge level. Even in Full Court, dispositions are entered and DL suspensions are done at the charge level. Judge Carver believed that Greg Noose wanted it charge specific due to the interstate compact. Judge Seiffert believed they did not need all the charges, just suspend at the Case level. Jennifer believed the new form would print out all the charges, even a seat belt. Judge Carver said that if an out of state driver gets his DL suspended, Greg Noose needs to know the specific charge as other states have different rules regarding DL suspensions.

Karen said right now there is: Failure to Appear, Failure to Pay and Failure to Comply, although in the statute right now Failure to Comply encompasses Failure to Pay. The committee voted that they want it case specific but if Judge Carver meets with Greg Noose and he said he needs the charge, it is agreeable to the committee. Karen said they will recreate the new DL suspension in Full Court once an agreement has been reached and it is finalized.

**NEXT MEETING:** Judges are attending their Spring School from April 26<sup>th</sup> – 30<sup>th</sup>.

**May 14<sup>th</sup>, 2010 at 9:00 A.M.**

An item we will discuss at the meeting will be expungement. Judge Mohr requested that Greg Noose attend that meeting. An update with the Municipal Infractions would also be included. Judge Carver believed we should adopt imaging standards if there is time at the meeting. Meeting adjourned.